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UNCLAS SECTION 01 OF 04 KUWAIT 004366

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STATE FOR EB/MTA/MST
STATE PLEASE PASS USTR FOR G. BLUE

E.O. 12958: N/A
TAGS: ECON EFIN ETRD KU
SUBJECT: KUWAIT 2005 NATIONAL TRADE ESTIMATE REPORT

REF: SECSTATE 240980

¶1. Please find the 2005 National Trade Estimate Report for Kuwait below. As requested reftel, the text has also been sent by email.

¶2. BEGIN TEXT OF REPORT

TRADE SUMMARY

The U.S. trade deficit with Kuwait for the first ten months of 2004 was $1.25 billion. U.S. exports to Kuwait were roughly the same over the first ten months of 2004 at $1.22 billion, as compared to $1.23 billion during the same period in 2003. At the same time, U.S. imports from Kuwait increased by 31 percent to $2.47 billion, up from $1.88 billion from January through October 2003. Kuwait imports more from the U.S. than from any other country.

IMPORT POLICIES

Tariffs

At the December 2001 Summit, GCC Heads of State adopted an across-the-board common external tariff of five percent for most products to start in January 2003 as part of the Customs Union agreement. The GCC states also agreed to develop a list of products to which a higher tariff will apply. Currently, some GCC countries maintain tariffs of 15 percent to 20 percent or higher on imported products. However, tariffs on tobacco, pork, and alcohol products can exceed 100 percent in countries where importation of such products is permitted.

On September 1, 2003, Kuwait increased tariffs from 4 percent to 5 percent on the vast majority of imported goods. Exceptions include 417 food and agriculture items, which will remain free of duties, as well as tobacco products, on which tariffs will remain at 100 percent.

Import Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms.

Documentation Requirements

In Kuwait, the clearing process can be manually intensive, requiring numerous transfers, vast paper work, and an array of duplications. This process is prone to errors and fraud, since human judgment plays a major role in processing the transactions, especially auditing, valuation, and inspection. In most instances, the same task is repeated two or more times at different stages of the process in order to capture customs-related data or to validate documentation. However, the Customs Department is currently undergoing a major privatization effort. Customs has contracted with a private company to manage customs services, including customs clearing. The implementation of a state-of-the-art computer system should also make the import process less complicated.

Customs Valuation

Kuwait began implementation of the Agreement in September
¶2003.

Textiles

Textiles accounted for approximately seven percent of Kuwait,s imports in 2003, and tariffs are five percent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As part of the GCC Customs Union, member countries are working toward unifying their standards and conformity assessment systems, and have progressed considerably toward the goal of a unified food standard, originally targeted for adoption by 2006. However, each country currently applies either its own standard or a GCC standard, causing confusion among business.

Kuwait maintains restrictive standards that impede the marketing of some exports. Kuwait strictly enforces shelf life standards on 44 of 75 food products listed in Gulf Standard 150/1993, but recognizes the manufacturer,s set shelf life on all other food products. Shelf life requirements for processed foods are far shorter than necessary to preserve freshness and result in those U.S. goods being non-competitive with products shipped from countries closer to Kuwait. Meanwhile, standards for medical, telecommunications, and computer equipment tend to lag behind technological developments, with the result that government tenders frequently specify the purchase of obsolete, often more costly items.

In October 2002, Kuwait announced it was considering adopting an import standards program similar to Saudi Arabia,s International Conformity Certification Program (ICCP). The Kuwaiti government has said the program, which would apply to between 15 and 45 types of consumer products (primarily electrical goods and motor vehicle parts), was being implemented because Kuwait lacked laboratory facilities to properly conduct its own inspections. In December 2002, Kuwait submitted a proposal for this program to the WTO. Kuwait implemented the ICCP on March 17, 2003, dividing imports under the program into five groups: (1) household appliances and electronics; (2) new and used cars and vehicles; (3) chemicals, including motor oil and paint; (4) building materials, including cement, gypsum, and bricks; and (5) paper and plastic items. The Kuwaiti program, like that of Saudi Arabia, calls for required products to be tested and certified by a single private company before being exported to Kuwait.
In July 2004, the regulatory authority responsible for the ICCP, the Public Authority for Industry (PAI), held a one-year review of the program. At that time, the PAI said that that over 30,000 individual products had been issued ICCP certificates, and that it was considering expanding the types of products requiring certification. Importers, representatives of foreign businesses and members of the diplomatic community all voiced serious concerns with the program. Industry complaints about the program are often forwarded to the private testing company rather than handled by the PAI itself. The United States, and many other WTO members, have raised concerns about the ICCP during WTO TBT Committee meetings.

In November 2004 the PAI indicated that it would introduce changes to the ICCP and transition, over a period of 18 months, to a new Kuwait Conformity Assessment Scheme (KCAS.) While the KCAS does ease some of the unnecessary burdens on exporters and works toward leveling the playing field with domestic manufacturers, the program does not appear to bring Kuwait into compliance with its TBT requirements and leaves the door open for arbitrary testing, inspection and certification requirements.

GOVERNMENT PROCUREMENT

Kuwait,s government procurement policies specify the purchase of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. In 2004, the Council of Ministers agreed to increase this price advantage to 15 percent; implementation of this increase, however, would require amending the GGC countries, unified agreement.

In January 2002, the Kuwaiti government transformed its offset program into the major vehicle for inducing foreign investment in Kuwait. The offset requirements imposed an offset obligation on civilian contracts with the Kuwaiti Government of 10 million Kuwaiti dinar (approximately $33 million) or more and on defense contracts of KD 1 million (approximately $3.3 million) or more. The obligation amounted to 35 percent of the contract value, which had to be invested in an approved offset business venture. A supplier had to sign a memorandum of agreement with the Offset Program Division at the Ministry of Finance before the contract is signed. The supplier also had to present a bank guarantee totaling 6 percent of the value of the offset obligation.

In September 2004, the Council of Ministers decided to suspend implementation of the offset program for all new government contracts in the military and civilian sectors pending further review by the Finance Ministry. A six-month review of the program was to take place, at the end of which the offset program would either be modified, reinstated or discontinued. No contracts awarded during the review period will carry an offset requirement.

Kuwait is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The GCC Secretariat has declared protection of intellectual property to be a priority and is working to strengthen GCC laws in the six member states, particularly for patent protection. In this respect, the GCC has adopted a unified patent law with the goal of creating a patent system for all member states. However, concerns remain regarding the law relative to member states, obligations under the TRIPS Agreement. The GCC patent office in Riyadh has received approximately 3,000 applications since it began accepting patent applications in October 1998, and issued its first patent certificates in late spring 2001. Its third round of patents is expected in early 2004. The GCC patent office plans to complete a review of all applications within two to three years of receipt. According to GCC patent regulations, once the GCC patent office grants a patent, all GCC states automatically afford its owner protection. The GCC has also indicated an interest in creating common trademark and copyright laws and regimes. However, no progress has been made so far in these areas.

Kuwait,s copyright law must be amended to make it consistent with its obligations under the TRIPS Agreement. The government is currently in the process of drafting these amendments, but has not yet set a date by which these will be submitted to the National Assembly. Kuwait,s revised patent and trademark legislation took effect on January 14, 2001. Enforcement of these laws remains inadequate to prevent widespread marketing of pirated products.

Following Kuwait,s elevation to the Special 301 Priority Watchlist in 2004, the Ministry of Commerce and the General Administration of Customs have redoubled their efforts to protect intellectual property rights. Kuwait Customs has been notably successful in conducting raids and seizures. However, the Ministry of Information (which is statutorily responsible for ensuring intellectual property rights) is not fully engaged and the Ministry of Interior has declined to use its police resources for enforcement efforts. Consequently, sales of pirated goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprise. Uncertain and slow judicial action remains a hurdle, and penalties, when imposed, are generally too weak to deter future crimes. In August 2004, the government submitted a draft law to the National Assembly that would increase penalties for those convicted of violating intellectual property rights.

SERVICES BARRIERS

Insurance

Pursuant to a November 2003 Council of Ministers resolution, foreign investors may establish insurance companies in Kuwait with the Ministry of Commerce and Industry,s approval.

Banking

Under Kuwait,s 2001 Foreign Direct Investment law, foreigners may own up to 100 percent of existing or newly formed Kuwaiti banks, subject to approval by the Central Bank. In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait; other foreign banks have submitted applications.

Shipping

Kuwait has prevented foreign shipping lines access to cargo for government projects by granting the United Arab Shipping Company the right of first refusal on all such cargoes. However, Kuwait no longer applies this requirement to shipments from U.S. ports.

Agent and Distributor Rules

According to Kuwait,s Commercial Agencies Law of 1964, only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters.

INVESTMENT BARRIERS

Kuwait currently maintains restrictions on direct foreign investment and applies discriminatory taxation policies. In May 2000, Kuwait,s National Assembly approved legislation that allows foreign nationals to own up to 100 percent of all listed companies on Kuwait,s stock exchange, except banks. Foreign-ownership in banks was limited to 40 percent with the additional restriction that any foreign-ownership above 5 percent must be approved by Kuwait,s Central Bank.

In March 2001, the National Assembly passed a direct foreign

investment bill that authorizes majority foreign-ownership in new investment projects (up to 100 percent foreign-ownership in selected sectors). The law also authorizes up to 10-year tax-holidays for new investors. The law went into effect on February 23, 2003.

ELECTRONIC COMMERCE

Kuwait and the other GCC member states are currently negotiating a unified electronic commerce law.
OTHER BARRIERS
Corporate Tax Policies
Kuwait taxes foreign companies but domestic entities are only required to pay zakat (a charitable donation). Foreign firms are currently subject to a maximum income tax rate of 55 percent, although the government is currently drafting a new tax law that would reduce the tax rate. Kuwaiti-listed companies are not subject to income tax, but are required to make an annual contribution of 2.5 percent of their net profits to the Kuwait Foundation for the Advancement of Sciences (KFAS). They must also contribute 2.5 percent of their net profits toward a National Labor Force Fund.

END TEXT OF REPORT.

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